



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/898,736	07/23/97	COFFENS	T 61944

IM22/1115  
FITCH EVEN TABIN AND FLANNERY  
SUITE 900  
135 SOUTH LASALLE STREET  
CHICAGO IL 60603-4277

EXAMINER

SHERRER, C

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 11/15/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

# Office Action Summary

Application No.  
**08/898,736**

Applicant(s)  
**Coppens et al**

Examiner  
**Curtis E. Sherrer**

Group Art Unit  
**1761**



☒ Responsive to communication(s) filed on 06/21/99, 07/13/99 and 08/13/99

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1, 3-9, 13-24, 27-31, 33, and 43-66 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 3-9, 13-24, 27-31, 33, and 43-66 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 16

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### Part III DETAILED ACTION

#### *Drawings*

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

#### *Specification*

2. The specification is objected to under 35 U.S.C. § 112, first paragraph, as the specification is not enabled for ATCC numbers 4858, 9363, 1891, 1472 and 14156. Because Claims 9, 24, and 28 require the organism, it is essential to the practice of the claimed invention. Therefore, applicants must comply with the deposit requirements set forth in 37 CFR 1.801 - 1.809. Specifically, Applicants need to provide an affidavit or declaration by applicant or someone associated with the patent owner who is in a position to make such assurances, or a statement by an attorney or of record over or her signature and registration number; stating that the strain will be irrevocably and without restriction or condition released to the public upon the issuance of a patent. See 37 C.F.R. 1.808 and MPEP 2404.

#### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claims 18 and 20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants have amended claims to recite the term "holding" rather than "moistening" without providing specification basis.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 53, 61 and 64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 53, 61 and 64 are considered indefinite because it is unclear how one can have "cycles of wetting" or "cycles of drying" that do not include the other. Specifically, to create a cycle of drying there must be a cycle of wetting.

8. Claims 53, 61 and 64 are considered indefinite because it is the scope of the phrase "spore elements" is unknown.

***Claim Rejections - 35 USC § 102/103***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 3-9, 13-24, 27-31, 33, and 43-66 are rejected under 35 U.S.C. 102(b) as being anticipated by or in the alternative rejected under 35 U.S.C. 103(a) as being unpatentable over Gyllang et al (European Brewing Convention (16th Congress)).

***Response to Arguments***

11. Applicant's arguments filed 06/21/99, 07/13/99 and 08/13/99 have been fully considered but they are not persuasive.

12. After a careful review of the Coppens Declaration, it is determined that the evidence found therein is not sufficient to show that the prior art disclosure does not inherently anticipate the claimed invention. It is shown in Applicants' Example 1, where the same organism (as that tested by Applicants in the declaration) is grown in generally the same condition, that "activated spores" are obtained. The evidence found in the declaration, on the other hand, states that no activated spores are produced. Due to this discrepancy, it is considered that said data is defective in some manner.

13. Alternatively, the data of the declaration casts doubt on the enablement of the claimed invention. Specifically, it appears that one does not always get activated spores by merely changing the temperature, or "addition of appropriate nutritional supplies" as stated in the instant

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specification on page 11. Therefore, it raises a question of enablement, i.e., would those of ordinary skill in the art suffer an undue burden in determining how to practice the invention.

It is also noted that no argument was presented as to why the instant claims are not obvious in view of the cited art.

*Conclusion*

14. No claim is allowed.

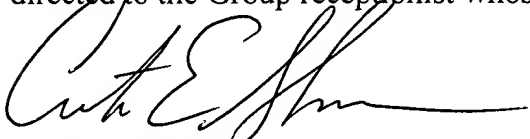
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Boivin et al (USPN 5,955,070) disclose a method of malting whereby *Geotrichum* species are inoculated into the grain..

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703)-308-3535. The **fax phone number** for this Group is (703)-305-3602.

19. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Curtis E. Sherrer  
November 3, 1999